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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 168

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, and JOHN L. LEWIS, as President, International Union, United Mine Workers of America, PETITIONERS

v.

THE UNITED STATES OF AMERICA

No. 169

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, and JOHN L. LEWIS, as President, International Union, United Mine Workers of America, and as Union Representative Trustee, Board of Trustees, United Mine Workers of America Welfare and Retirement Fund, PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The district court filed no opinion; its findings of fact and conclusions of law appear in the record at pp. 142 to 152. The opinion of the Court

of Appeals for the District of Columbia (R. 544-553) has not yet been reported.

JURISDICTION

The judgments of the Court of Appeals were entered June 6, 1949 (R. 554, 555). The petition for writs of certiorari was filed July 6, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

Despite the extended list of questions presented in the petition we believe the Court need only consider the following in determining whether the judgments below call for review by this Court:

1. Whether petitioners were required to comply with the temporary restraining order of the district court pending ultimate determination of the legal issues involved notwithstanding the assertion of the unconstitutionality of the statute under which the Government was proceeding.

2. Whether factual determinations, concurred in by both courts below, are proper subjects of review by this Court.

3. Whether the fines imposed by the district court exceeded the bounds of its discretion or violated the Eighth Amendment.

4. Whether the expiration of the temporary restraining order by its terms and the dissolution of the preliminary injunction, after settlement of

the underlying labor dispute and cessation of the strike, rendered moot the controversy with respect to the validity of their issuance.

STATUTORY PROVISIONS INVOLVED

The pertinent statutory provisions are set forth in the appendix.

STATEMENT

The United States brought suit under Section 208 of the Labor Management Relations Act, 1947 (Act of June 23, 1947, c. 120, 61 Stat. 136, 155, 29 U. S. C. 178) to enjoin petitioners from continuing and to terminate a strike in the bituminous coal industry then in progress (R. 4-16). A temporary restraining order was issued with which petitioners failed to comply (R. 81-87, 148). Petitioners were then required to show cause why they should not be punished in criminal and civil contempt (R. 123-124). After notice and hearing petitioners were adjudged guilty of both civil and criminal contempt and fines were imposed for the criminal contempt in the amount of $20,000 upon John L. Lewis and of $1,400,000 upon the United Mine Workers (R. 149, 151-153). No further proceedings were had with respect to the civil contempt (R. 181, 182, 183, 204). Subsequently a preliminary injunction was granted (R. 158). Appeals were taken from the orders granting the temporary restraining order and the preliminary injunction and from the judgments finding petitioners guilty of criminal contempt and sentencing them to pay fines (R. 545). The judgments

holding petitioners guilty of criminal contempt and imposing fines were affirmed; the appeal relating to the granting of the temporary restraining order and the preliminary injunction was dismissed as moot (R. 553, 554, 555).

The National Bituminous Coal Wage Agreement of 1947 provided for the establishment of a fund to be administered by three trustees, one representing the union, one representing the operators, and the third a neutral trustee (R. 22, 23). There had been disagreement with respect to the establishment of the fund and on January 16, 1948, Thomas E. Murray, the neutral trustee, resigned (R. 13, 170). After some fruitless correspondence with individual signatories to the agreement, on February 2, John L. Lewis wrote to all signatories advising them that the union "reserves the right at will to take any independent action necessary to the enforcement of the contract" (R. 98, 101). On March 12, in a letter to the officers and members of all local unions in all bituminous districts of the United States, Lewis outlined the course of the dispute, stated that the coal operators "have dishonored the 1947 Wage Agreement," and advised them of the union's intention "to go forward in requiring the coal operators to honor their agreement" (R. 102-103, 149-150). The purpose and effect of this letter was to cause a strike (R. 150). On March 15 a concerted work stoppage of miners in every section of the nation commenced (R. 150). Approximately 87 per cent of all bitum-

inous coal miners are members of the United Mine Workers and within a period of seven days following March 12 production of bituminous coal decreased by more than 80 per cent (R. 264, 546).

On March 23, 1948, the President, pursuant to Section 206 of the Labor Management Relations Act, established a Board of Inquiry to inquire into the issues involved in the labor dispute (R. 142). In its written report to the President made on March 31, the Board found that the action taken by the president of the union induced the work stoppage and that the stoppage had precipitated a crisis in the industry and in the nation as a whole (R. 547). Pursuant to Section 208 of the Act, the President directed the Attorney General to sue to enjoin the strike (R. 143). Section 208(a) authorizes the district courts of the United States to enjoin a threatened or actual strike or lockout, upon the petition of the Attorney General, if the court finds that it affects an interstate industry entirely or in substantial part and will imperil the national health or safety. During the life of the injunction, which may not continue for longer than 80 days, the parties are required to make every effort to settle their dispute. Sections 209 and 210.

The complaint filed on April 3 alleged, among other things, that continuation of the existing strike would imperil the national health and safety and incorporated the Board's report and affidavits of numerous government officials familiar with

the facts supporting this allegation (R. 12, 50-81). The same day a temporary restraining order was issued which, pending further order of the court, "hereby restrained" continuation of the strike and further ordered petitioners to "forthwith instruct" all members of the union to return to work (R. 81, 85). This order expired by its terms on April 13 and was subsequently extended to April 23 (R. 138-139). A copy of the restraining order was served on the union and John L. Lewis on April 5 (R. 145-146).

On April 7 the United States filed a petition for a rule to show cause why petitioners should not be punished for civil and criminal contempt on the ground that they had violated the terms of the temporary restraining order by taking no action to end the strike and by permitting and encouraging the continuation of the strike (R. 116, 146). On April 12, the return day, the court found that the alleged contempts had not been sufficiently purged and ordered the cause set down for trial on April 14 (R. 148). No communications had been sent by the union to its members after April 3 instructing them to return to their employment until April 12 (R. 336-339). On this day, only after agreement had been reached on the appointment of a neutral trustee and upon a basis for settlement of the dispute, two messages were dispatched to union officials throughout the country which informed them that "The agreement is now honored" and "officially advised" the miners to

"return to your usual employment upon receipt of this telegram" (R. 147-148). The district court thus concluded that petitioners had violated the terms of the temporary restraining order, adjudged them guilty of criminal and civil contempt, and imposed fines for criminal contempt of $20,000 upon Lewis and $1,400,000 upon the union (R. 149, 151-152, 153).

After hearings on the issuance of a preliminary injunction, the district court found that a strike continued to exist and that the national welfare and safety were involved, and granted a preliminary injunction on April 21 (R. 158-165). On June 23, upon application of the United States and a showing that normal production of bituminous coal had previously been re-established, the injunction was discharged by the district court (R. 199-203, 204).

The court below declined to pass upon the substantive issues raised as to the validity and applicability of the statute, ruling that under *United States* v. *United Mine Workers,* 330 U. S. 258, the petitioners were required to obey the district court's temporary restraining order until it could determine its authority in the dispute, that the evidence showed conclusively that they made no attempt to comply with the order, and that their defiance of that order was punishable as a criminal contempt (R. 553). It held that in view of the fines imposed for similar offenses just a year before, those in the instant case were not excessive and,

accordingly, affirmed the judgments in the contempt proceeding (R. 553). It held further that the "temporary restraining order expired by its own terms, and the preliminary injunction was discharged by the trial court" and therefore dismissed the appeal with respect to these orders as moot (R. 553).

ARGUMENT

The principal questions presented by the petition in this case were raised and decided in *United States* v. *United Mine Workers,* 330 U. S. 258. No questions necessary to a decision in this case are presented which have not been definitively disposed of by this Court's decision in that case or other cases. There is, therefore, no occasion to review the judgments of the court below.

The judgments which petitioners attempt to bring before this Court for review involve (1) affirmance of the district court's adjudication and fine for criminal contempt, and (2) dismissal of the appeal relating to the granting of the temporary restraining order and the preliminary injunction.

1. With respect to the contempt adjudication petitioners urge, among other things, that the provision of the Labor Management Act under which an injunction was sought is unconstitutional and, therefore, that the temporary restraining order did not have to be obeyed, that the evidence did not support the contempt adjudication, and that

the fines imposed were contrary to law and excessive.

a. The judgments holding petitioners guilty of criminal contempt were entirely correct regardless of the constitutionality of Section 208 of the Labor Management Relations Act. The question of the constitutional validity of Section 208 is relevant to the adjudication for contempt only if petitioners were free to disregard an erroneous temporary restraining order. But this precise question was answered against petitioners in the *United Mine Workers* case when this Court held, in almost identical circumstances, that, even if erroneously issued, "an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings" and that disobedience of such an order is punishable as contempt. 330 U. S. at 293. The restraining order was challenged on constitutional grounds in that case, as here, with the same rule held applicable. See also *Howat* v. *Kansas,* 258 U. S. 181; *United States* v. *Shipp,* 203 U. S. 563; *Gompers* v. *Buck's Stove and Range Co.,* 221 U. S. 418, 450; *Worden* v. *Searls,* 121 U. S. 14.

Admittedly, if the exercise of jurisdiction amounted to the usurpation of authority clearly denied, obedience to an order is not compelled. But no claim of a frivolous assumption of jurisdiction can seriously be asserted here. The argument

against jurisdiction rests essentially on the contention that the provisions in the Act for the regulation of strikes which threaten to imperil the national health or safety are unconstitutional because the Constitution guarantees an unqualified right to strike. It is unnecessary to consider at length the merits of this question, in the light of the many pertinent decisions of this Court, to establish that there was considerably more than an adequate basis for the district court to exercise jurisdiction. The very decision in the *United Mine Workers* case recognizes the existence of circumstances in which strikes may be enjoined. This is but one of many occasions on which this Court by its language or decision has made clear that the right to strike is not absolute. See *United Automobile Workers* v. *Wisconsin Employment Board,* 336 U. S. 245, 259-260, 261; *Dorchy* v. *Kansas,* 272 U. S. 306, 311; *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469, 488; *United States* v. *Hutcheson,* 312 U. S. 219, 232; *Allen Bradley Co.* v. *Local Union No. 3,* 325 U. S. 797; *United States* v. *Petrillo,* 332 U. S. 1; *In re Debs,* 158 U. S. 564; *Trainmen* v. *Toledo, P. & W. R. Co.,* 321 U. S. 50, 58-59, 63; *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 565-567. In the *Texas & New Orleans R. Co.* case, which involved the Railway Labor Act and "cooling-off" provisions comparable to those involved here, the Court inferred a limitation on the right to strike and clearly assumed the validity of this limitation. It

is apparent, therefore, that there was no such clear invasion of a constitutional right as to render the exercise of jurisdiction by the district court a usurpation of power. Consequently, the deliberate refusal to obey the mandate of the temporary restraining order was properly adjudicated a criminal contempt.

b. No valid basis is presented for having this Court review the factual basis of the conviction for criminal contempt. A writ of certiorari will not issue to review the evidence or the inferences drawn from it. *General Pictures Co.* v. *Electric Co.,* 304 U. S. 175, 178; *United States* v. *Johnston,* 268 U. S. 220, 227; *Southern Power Co.* v. *N. C. Public Service Co.,* 263 U. S. 508. Moreover, the findings have been concurred in by both lower courts and therefore are final "in the absence of very exceptional showing of error". *Comstock* v. *Group of Investors,* 335 U. S. 211, 213-214; *General Pictures Co.* v. *Electric Co.,* 304 U. S. 175, 178; *United States* v. *Chemical Foundation,* 272 U. S. 1, 14; *United States* v. *McGowan,* 290 U. S. 592; *Alabama Power Co.* v. *Ickes,* 302 U. S. 464. The clear support for the findings is demonstrated in the summary delineation in the opinion of the court below of the undisputed evidentiary facts (R. 545-551).

c. Similarly, no question for review is presented by the amounts of the fines imposed. When this Court considered the amount of the fines for crimi-

nal contempt imposed upon petitioners just one year before the present contempt, it pointed out that "great reliance must be placed upon the discretion of the trial judge." 330 U. S. at 303. In the instant case the district court found as a fact that petitioners "beyond a reasonable doubt, wilfully, wrongfully and deliberately disobeyed and violated" its temporary restraining order (R. 149) and levied fines exactly twice the amount of those approved by this Court in the earlier suit. These fines were upheld by the court below as "not excessive" (R. 553). In view of the renewal of petitioners' contemptuous conduct fresh upon the validation of their previous conviction, doubling of the penalties previously approved was not an abuse of discretion and no error was committed in affirmance by the court below.

2. Since the question of the validity of the temporary restraining order and the preliminary injunction is not relevant to the contempt issue for the reasons already discussed, the court below properly dismissed as moot the appeal involving this question. The temporary restraining order expired by its own terms (R. 138). The preliminary injunction was discharged, on the Government's motion, when it appeared that the subject of the dispute had been settled, that the strike had ended, and that there was no longer any threat of a strike (R. 199-203, 204). Discharge of the injunction relieved petitioners of all restraint and there was

no further relief that the court below was able to afford. Since there was no subject matter upon which a judgment could operate, it is apparent that petitioners sought the determination of an abstract question. The appeal, therefore, was properly held moot. *Montgomery Ward & Co., Inc.* v. *United States,* 326 U. S. 690. See also Brief of the United States in Opposition in *Brotherhood of Locomotive Engineers, etc.* v. *United States,* No. 182, this Term.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for writs of certiorari should be denied.

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AUGUST 1949.

APPENDIX

The pertinent provisions of the Labor Management Relations Act, 1947 (Act of June 23, 1947, 61 Stat. 136) provide as follows:

> Section 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public. [29 U. S. C., Supp. II, 176.]
>
> Section 207. (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute. [29 U. S. C., Supp. II, 177.]

* * * * *

Section 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 29, secs. 346 and 347). [29 U. S. C., Supp. II, 178.]

Section 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter. [29 U. S. C., Supp. II, 179.]

Section 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action. [29 U. S. C., Supp. II, 180.]

Sec. 501. When used in this Act— * * *

(2) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees. [29 U. S. C., Supp. II, 142(2).]

Sec. 502. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; * * *. [29 U. S. C., Supp. II, 143.]

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